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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,188	10/29/2003	Phillip M. DeLaine JR.	60058.0002USC1	6558

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EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/696,188	Applicant(s) DELAINE, PHILLIP M.	
	Examiner Khoa D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-70 and 72 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-70 and 72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species IV in the reply filed on 06/14/2004 is acknowledged. The traversal is on the grounds that the species are all obvious variants of each other and thus are not patentably distinct. Therefore, with applicant's admission that "the species are all obvious variants of each other", the restriction requirement is hereby withdrawn and all of the species and claims 45-70 and 72 are considered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the user backpack as recited in claim 54, and second water channel as recited in claim 68 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement

Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: attachment means as recited in claims 51, 58, 61, 63, 67 and 70; a user control means as recited in claims 47 and 57; a manually adjustable control as recited in claim 55; a nozzle means as recited in claim 64; and a first nozzle means, a second nozzle means and a valve means as recited in claims 68 and 70.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 45, 48, 51, 53, 60-64 and 72, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Labonte (745405).

Regarding claims 45 and 72, the Labonte reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (about 4), a handle (2) attached thereto for pushing and conducting (via bore 18) fluid to the broom head. The broom head has a lower surface including a

plurality of bristles (7,9) extending downwardly therefrom, and an upper surface (about 19 in Fig. 2) above the lower surface. The device also includes a fluid channel (13,15) disposed within the broom head, a plurality of nozzles (16) attached to the broom head for expelling the fluid, and a valve (26) connected to the handle for regulating the flow of the fluid.

All functional implications and statements of intended use have been fully considered. However, they are deemed not to impose any structural limitations distinguishable over the Labonte reference which is capable of being used to delivery water to a horizontal surface.

Regarding claim 48, the broom head further includes a port hole and plug (17) located in the fluid channel (13,15). The plug is removable to allow the fluid channel to be cleaned of debris.

Regarding claim 51, the device including a kit that comprises the broom head, the handle, attachment means (20a,21,22) for attaching the handle to the top surface of the broom head, and attachment means (15) for attaching the nozzles.

Regarding claim 53, the Labonte reference also discloses that the device also includes a hose (3) connected to the valve (26) for receiving fluid from a pump which is detached from the broom (page 2, line 21-23).

Regarding claims 60 and 62, the Labonte reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (about 4), a handle (2) attached thereto for pushing and conducting (via bore 18)

fluid to the broom head. The broom head has a lower surface including a plurality of bristles (7,9) extending downwardly therefrom, and an upper surface (about 19 in Fig. 2) above the lower surface. The device also includes a fluid channel (13,15) disposed within the broom head, a plurality of nozzles (16) attached to the broom head for expelling the fluid, and a valve (26) connected to the handle for regulating the flow of the fluid. The device also includes a hose (3) connected to the valve (26) for supplying the fluid to the valve, and a quick connector (20a,21,22) for attaching the handle to the broom.

Claims 61 and 63 are substantially similar to claim 51 and rejected as discussed above.

Regarding claim 64, the Labonte reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (about 4), a handle (2) attached thereto for pushing and conducting (via bore 18) fluid to the broom head. The broom head has a lower surface including a plurality of bristles (7,9) extending downwardly therefrom, and an upper surface (about 19 in Fig. 2) above the lower surface. The device also includes a spray bar (13,15) having a plurality of nozzles (16) disposed between the top and lower surfaces. The nozzles are attached to the broom head via the spray bar. The device also includes a valve (26) connected to the handle for regulating the flow of the fluid.

6. Claims 45, 49, 50, 51, 60-64, 68, 70 and 72, are rejected under 35 U.S.C. 102(b) as being anticipated by Briar (420236).

Regarding claims 45 and 72, the Briar reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (2), a handle (4) attached thereto for pushing and conducting fluid to the broom head. The broom head has a lower surface including a plurality of bristles (9) extending downwardly therefrom, and an upper surface (about 11 in Fig. 5) above the lower surface. The device also includes a water channel (21,22,35,36) disposed within the broom head, a plurality of nozzles (6) attached to the broom head for expelling the fluid, and a valve (45) connected to the handle for regulating the flow of the fluid.

Regarding claims 49 and 50, the nozzles are individually removable from and attachable to the broom head via the water channel.

Regarding claim 51, the device including a kit that comprises the broom head, the handle, attachment means (40) for attaching the handle to the broom head, and attachment means (the threaded portion of element 6) for attaching the nozzles to the broom head via the water channel.

Regarding claims 60 and 62, the Briar reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (2), a handle (4) attached thereto for pushing and conducting fluid to the broom head. The broom head has a lower surface including a plurality of bristles (9) extending downwardly therefrom, and an upper surface (about 11 in Fig. 5) above the lower surface. The device also includes a water channel (21,22,35,36) disposed within the broom head, a plurality of nozzles (6) attached to the broom

head for expelling the fluid, and a valve (45) connected to the handle for regulating the flow of the fluid. The device also includes a hose (44) connected to the valve (45) for supplying the fluid to the valve, and a quick connector (40) for attaching the handle to the broom.

Claims 61 and 63 are substantially similar to claim 51 and rejected as discussed above.

Regarding claim 64, the Briar reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (2), a handle (4) attached thereto for pushing and conducting fluid to the broom head. The broom head has a lower surface including a plurality of bristles (9) extending downwardly therefrom, and an upper surface (about 11 in Fig. 5) above the lower surface. The device also includes a spray bar (21,22) having a plurality of nozzles (6) disposed between the top and lower surfaces. The nozzles are attached to the broom head via the spray bar. The device also includes a valve (45) connected to the handle for regulating the flow of the fluid.

Regarding claim 68, the Briar reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (2), a handle (4) attached thereto for pushing and conducting fluid to the broom head. The broom head has a lower surface including a plurality of bristles (9) extending downwardly therefrom, and an upper surface (about 11 in Fig. 5) above the lower surface. The device also includes a first water channel (21) disposed on the broom head, a first nozzle means (nozzles 6 attached to element 21), a second

water channel (22), and a second nozzle means (nozzles 6 attached to element 22). The device also includes a valve (45) connected to the handle for regulating the flow of the fluid.

Claim 70 is substantially similar to claim 51 and rejected as discussed above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 46, 47 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briar (as discussed above) in view of Chen (5988912).

Regarding claims 46 and 69, the Briar reference DIFFERS in that it does not specifically include a reservoir for supplying an agent as claimed. Attention, however, is directed to the Chen reference which discloses a cleaning broom (Fig. 1) having a reservoir (28) attached to the handle for supplying a cleaning agent to the fluid conducted in the handle to the broom. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Briar broom by employing a reservoir for supply a cleaning agent, in view of teaching of Chen, in order to provide the broom with a cleaning agent to facilitate the cleaning process.

Regarding claim 47, the reservoir (28) further includes a user control means or valve (36) for regulating the supply of the cleaning agent from the reservoir.

9. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Briar (as discussed above) in view of Schulz et al. (4103381).

The Briar reference DIFFERS in that it does not specifically include a fluid motor as claimed. Attention, however, is directed to the Schulz et al. reference which discloses a cleaning broom (Fig. 1) having a fluid motor (at 10) disposed in the broom head for producing pressurized fluid spray. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Briar broom by employing a fluid motor, in view of teaching of Schulz et al., in order to provide the broom with a level of pressure of applied working fluid that is forceful to lift the debris off the cleaning surface.

10. Claims 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briar (as discussed above) in view of Schneider et al. (5395052).

The Briar reference also discloses that the device includes a hose (44) connected to the valve (45) for supplying the fluid from a pressurized supply source to the valve.

The Briar reference DIFFERS in that it does not specifically include a fluid pump powered by gasoline engine as claimed. Attention, however, is directed to the Schneider et al. reference which discloses a cleaning device (Fig. 1) having a fluid pump (2) powered by an internal combustion or gasoline engine (3, col. 3,

lines 58-61). Both the pump and the gasoline engine are provided in a user backpack (col. 3, lines 42-46). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Briar broom by employing a fluid pump and a gasoline engine provided in a backpack, in view of teaching of Schneider et al., to allow the broom to be used in various remote locations.

11. Claims 65 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briar (as discussed above) in view of Newman (Des 250826).

The Briar reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (2), a handle (4) attached thereto for pushing and conducting fluid to the broom head. The broom head has a lower surface including a plurality of bristles (9) extending downwardly therefrom, and an upper surface (about 11 in Fig. 5) above the lower surface. The device also includes a water channel (21,22,35,36) disposed within the broom head, a plurality of nozzles (6) attached to the broom head for expelling the fluid, and a valve (45) connected to the handle for regulating the flow of the fluid.

The Briar reference DIFFERS in that it does not specifically include a guard for each of the plurality of nozzles as claimed. Attention, however, is directed to the Newman reference which discloses a cleaning device (Fig. 1) having a guard (Fig. 3) for each of the plurality of the nozzles. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to have modified the Briar broom by employing a guard for each of the plurality of nozzles, in view of teaching of Newman, in order to provide the shield for each of the nozzles against damage in case of accidental collision against a hard object.

Regarding claim 67, the device including a kit that comprises the broom head, the handle, attachment means (40) for attaching the handle to the broom head, and attachment means (the threaded portion of element 6) for attaching the nozzles to the broom head via the water channel.

12. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Briar (as discussed above) in view of Chen (5988912).

The modified Briar reference DIFFERS in that it does not specifically include a reservoir for supplying an agent as claimed. Attention, however, is directed to the Chen reference which discloses a cleaning broom (Fig. 1) having a reservoir (28) attached to the handle for supplying a cleaning agent to the fluid conducted in the handle to the broom. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Briar broom by employing a reservoir for supply a cleaning agent, in view of teaching of Chen, in order to provide the broom with a cleaning agent to facilitate the cleaning process.

13. Claims 55 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briar.

The Briar reference discloses a device for sweeping a surface. The device includes a push broom (1) having a broom head (2), a handle (4) attached thereto for pushing and conducting fluid to the broom head. The broom head has a lower surface including a plurality of bristles (9) extending downwardly therefrom, and an upper surface (about 11 in Fig. 5) above the lower surface. The device also includes a first plurality of nozzles (those nozzles 6 that are located in the mid span of the bar 21,22) attached to the broom head for expelling the fluid. The device also includes a second plurality of nozzles (the outer nozzles 6) which are radially disposed on the left and right of the first nozzles and of the lower surface of the broom head for projecting the fluid in a downwardly direction. Even though the Briar reference DIFFERS in that it does not specifically include a manually adjustable control as claimed. Based on applicant's admission of obvious variant, it would have been obvious to one of ordinary skill in the art the time the invention was made to manually control the flow of the fluid from the first nozzles to the second nozzles or vice versa by simply unthreading the nozzles (either the outer or the inner nozzles) and cover the openings with plugs. Doing so will cause the spray pattern to be changed according to the intended purpose.

Regarding claim 58, the modified device including a kit that comprises the broom head, the handle, attachment means (40) for attaching the handle to the broom head, and attachment means (the threaded portion of element 6) for attaching the nozzles to the broom head via the water channel.

14. Claims 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Briar (as discussed above) in view Chen (5988912).

The modified Briar reference DIFFERS in that it does not specifically include a reservoir for supplying an agent as claimed. Attention, however, is directed to the Chen reference which discloses a cleaning broom (Fig. 1) having a reservoir (28) attached to the handle for supplying a cleaning agent to the fluid conducted in the handle to the broom. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Briar broom by employing a reservoir for supply a cleaning agent, in view of teaching of Chen, in order to provide the broom with a cleaning agent to facilitate the cleaning process.

Regarding claim 57, the reservoir (28) further includes a user control means or valve (36) for regulating the supply of the cleaning agent from the reservoir.

15. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Briar (as discussed above) in view of Schulz et al. (4103381).

The modified Briar reference DIFFERS in that it does not specifically include a fluid motor as claimed. Attention, however, is directed to the Schulz et al. reference which discloses a cleaning broom (Fig. 1) having a fluid motor (at 10) disposed in the broom head for producing pressurized fluid spray. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Briar broom by employing a

fluid motor, in view of teaching of Schulz et al., in order to provide the broom with a level of pressure of applied working fluid that is forceful to lift the debris off the cleaning surface.

Double Patenting

16. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. Claims 45, 52 and 72 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,692,174; claim 48 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,692,174; claim 65 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6,692,174; claim 64 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,413,002. Although the conflicting claims are not identical, they are not patentably distinct from each other

because the patented claims anticipate the pending claims and anticipation is the epitome of obviousness.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McCauley was cited to show a cleaning device having a spray bar with a first plurality of nozzles and a second plurality of nozzles, a debris port hole and a plug. Smith was cited to show a cleaning device having fluid operated turbine or motor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (703) 306-5483. The examiner can normally be reached on M-F (7:00-4:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', is written over a horizontal line.

Khoa D. Huynh
Patent Examiner
Art Unit 3751

HK
08/21/2004